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In re Application of HOLMES et al
U.S. Application No.: 10/520,368
PCT Application No.: PCT/GB2002/003174
Int. Filing Date: 10 July 2002
Priority Date Claimed: (none)
Attorney Docket No.: 122347
For: OPTICALLY VARIABLE SECURITY
DEVICE

DECISION

This is in response to applicant's "Response to Decision" filed 13 September 2007, which is being treated under 37 CFR 1.497(d).

BACKGROUND

On 10 July 2002, applicant filed international application PCT/GB2002/003174. A copy of the international application was communicated to the USPTO from the International Bureau on 22 January 2004. The thirty-month period for paying the basic national fee in the United States expired on 10 January 2005.

On 06 January 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 03 May 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 28 June 2006, applicant filed a petition under 37 CFR 1.47(a) along with an executed declaration.

On 13 March 2007, this Office mailed a decision dismissing the 28 June 2006 petition.

On 05 September 2007, the DO/EO/US mailed a Notice of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903).

On 13 September 2007, applicant filed the present petition under 37 CFR 1.497(d).

DISCUSSION

37 CFR 1.497(d) states,

If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92bis subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

- (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in § 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter); and
- (4) Any new oath or declaration required by paragraph (f) of this section.

With regard to item (1) above, the requisite statement has not been provided.

With regard to item (2) above, the requisite \$130.00 processing fee will be charged to Deposit Account No. 15-0461.

With regard to item (3) above, the petition fails to state whether an assignment has been executed by any of the original inventors. If such an assignment exists, written consent of the assignee must be provided, and proof of ownership of the assignee must be established. See 37 CFR 3.73(b).

With regard to item (4) above, the requisite new declaration has been provided.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.497(d) is DISMISSED without prejudice.

The Notice of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903) mailed 05 September 2007 is hereby VACATED.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.497(d)". No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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